

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G600426**

**ALFRED L. MITCHELL,  
EMPLOYEE**

**CLAIMANT**

**PULASKI COUNTY SPECIAL SCHOOL DISTRICT,  
EMPLOYER**

**RESPONDENT NO. 1**

**ARK. SCHOOL BOARDS ASS'N WORKERS'  
COMPENSATION TRUST  
CARRIER/TPA**

**RESPONDENT NO. 1**

**STATE OF ARKANSAS, DEATH & PERMANENT  
TOTAL DISABILITY TRUST FUND**

**RESPONDENT NO. 2**

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE  
FILED MARCH 16, 2021**

Hearing conducted on Tuesday, March 16, 2021, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Little Rock, Pulaski County, Arkansas.

The claimant, Mr. Alfred L. Mitchell, *pro se*, of North Little Rock, Pulaski County, Arkansas, failed and/or refused to appear at the hearing.

Respondent No. 1 was represented by the Honorable Guy Alton Wade, Friday, Eldredge & Clark, LLP, Little Rock, Pulaski County, Arkansas.

Respondent No. 2, represented by the Honorable David L. Pake, State of Arkansas, Arkansas Workers' Compensation Commission, Special Funds Division, Little Rock, Pulaski County, Arkansas, waived its appearance at the hearing.

**STATEMENT OF THE CASE**

A hearing was conducted on Tuesday, March 16, 2021, to determine whether this claim should be dismissed for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2020 Lexis Replacement), and Commission Rule 099.13 (2020 Lexis Replacement). On December 9, 2020, Respondent No. 1's attorney filed an entry of appearance and motion to dismiss without prejudice for lack of prosecution letter with the Commission. On Wednesday, January 13, 2021, a hearing was conducted on Respondent No. 1's letter motion to dismiss without prejudice. By letter to the

parties dated January 14, 2021, the ALJ advised them he would hold consideration of Respondent No. 1's motion in abeyance for 30 days in order to allow Mr. Mitchell time to retain the services of an attorney in this claim. Having not heard from either Mr. Mitchell or his attorney within this 30-day period, this hearing was scheduled to consider the merits of Respondent No. 1's letter motion to dismiss without prejudice.

In accordance with the applicable Arkansas law, the claimant was mailed and received due and legal notice of Respondent No. 1's motion to dismiss as well as a copy of the hearing notice. Thereafter, the claimant failed and/or refused to file any response to Respondent No. 1's motion to dismiss, either via email, the United States Postal Service, or any other medium of communication. He also failed and/or refused to appear at the hearing, or to cause anyone to appear on his behalf.

The record herein consists of the hearing transcripts of the January 13, 2021 and the March 16, 2021 hearings on Respondent No. 1's motion to dismiss, and any and all exhibits contained therein and attached thereto, as well as the Commission's entire file in this matter, which is hereby incorporated by reference into the hearing record.

### **DISCUSSION**

Consistent with *Ark. Code Ann.* § 11-9-702(a)(4) (2020 Lexis Supp.), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a hearing on Respondent No. 1's motion to dismiss. Rather than recite a detailed analysis of the record, suffice it to say the preponderance of the evidence introduced at the hearing and contained in the record conclusively reveals the claimant has to date failed and/or refused to prosecute his claim.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Commission has jurisdiction of this claim.
2. After the claimant received due and legal notice of Respondent No. 1's December 9, 2020 letter motion to dismiss without prejudice, as well as a copy of the hearing notice, an initial hearing was conducted on January 13, 2021 on Respondent No. 1's letter motion to dismiss. At that time the claimant appeared *pro se* and requested an additional 30 days to seek to obtain the services of legal counsel. Both on the record at this first hearing of January 13, 2021, and by letter dated January 14, 2021, the ALJ committed the parties he would hold a decision on Respondent No. 1's December 9, 2020 letter motion to dismiss in abeyance, and allow the claimant an additional 30 days to obtain the services of an attorney to represent him in this claim. The ALJ further stated that if the claimant was unable to obtain legal representation within the agreed 30 days, another hearing would be conducted for consideration of Respondent No. 1's letter motion to dismiss.
3. This second hearing was conducted on Tuesday, March 16, 2021, and the claimant was provided due and legal notice of the date, time, and place of the hearing. Having been given due and legal notice of Respondent No. 1's motion to dismiss, as well as notice of this second hearing, the claimant failed and/or refused to either file a response to Respondent No. 1's letter motion to dismiss; or to communicate in any way with the Commission or Respondent No. 1; or to appear at the hearing. Consequently, the claimant is deemed to have waived his appearance at and right to the hearing.
4. The preponderance of the evidence of record reveals the claimant has to date failed and/or refused to prosecute his claim as required .
5. Therefore, Respondent No. 1's letter motion to dismiss without prejudice filed with the Commission on December 9, 2020 is GRANTED; and this claim hereby is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This opinion and order shall not be construed to prohibit the claimant, his attorney, any attorney he may retain in the future, or anyone acting legally and on his behalf, from refileing the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

Respondent No. 1 hereby is ordered to pay the court reporter's invoice within twenty (20) days of its receipt thereof.

**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp